

DEPARTMENT OF STATE

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HANDLING INDICATOR

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TO : DEPARTMENT OF STATE

1001 OCT 16 1964

FROM : AmConGen, NASSAU

DATE: October 16, 1964

SUBJECT: Arrest of American Fishermen by Bahamas Authorities

REF : DEPTTEL 45 and Nassau's Telegrams 29 and 30 to Department

The case of the American fishing boats "Five Dees" and "Miss Gail" from Miami, disposed of in Magistrate's Court in Nassau on October 10, 1964 with the imposition of fines of \$10 each for the six offending fishermen and of a stern warning from the bench. No action was taken toward confiscation of the boats. Upon payment of the fines, the crews returned to the United States on their boats. The Bahamas Government is taking a strong position regarding crawfishing by United States vessels in Bahamas. Bahamas definition territorial sea does not appear to coincide with the traditional view of the United States as stated in Depts. A-4, June 28, 1964. As previously reported (RefTel 30), in addition to claiming the customary 3-mile limit, the Bahamas Government claims that the boundaries of the Bahamas are the continental shelf, which is defined to be the seabed to the depth of 200 meters.

NARRATIVE AND DISCUSSION

On the morning of October 8, 1964, the British Patrol Frigate "Decoy" spotted a group of three lobster fishing vessels. Newspapers reported their position variously as "about 10 miles off Great Isaacs Light" and "10 miles east of Great Isaacs Cay well within territorial waters," and the official charge sheet stated that the boats were at Isaacs Rock Channel, Berry Islands. The men themselves pointed out on chart positions very roughly approximated to be 25°53' N. Latitude, 78°45' W. Longitude.

H.M.S. "Decoy" lowered a dinghy to inspect the boats whereupon all three boats attempted to flee. The dinghy fired a warning shot

/and one

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Drafted by:

OSWhittemore:es

10/16/64

Contents and Classification Approved by:

Clearances:

and one of the boats, the "Five Dees" stopped. "Miss Gail", the other boat, returned when requested by radio-telephone to do so. The skipper of "Miss Gale" claims he was told he was to be questioned only, but both boats with the six American crewmen: Walter Thompson, Joe Schulman, Earle Hall, Edward Darville, Benjamin Thompson, and Moises Elgado, were arrested and brought to Nassau.

The six men appeared in Magistrate's court in Nassau the next morning and were charged as follows (two charge sheets were prepared, one for each vessel): "Attempting to take fish within the waters of the Colony: cont. to Sect. 198 (1) read with 83(2) of the Penal Code. That they between 3:30 p.m. on 7th October, 1964 and 8:30 a.m. on 8th October, 1964 at Isaacs Rock Channel, Berry Islands, being on board a foreign vessel, to wit - (name of vessel) - did attempt to take fish within the waters of the Colony." Max Swartz and his son Peter, of East Coast Fisheries Inc., 360 West Flagler Street, Miami, Florida, who are co-signers of the mortgages on the two vessels, and who had called at the Consulate General the previous day for advice and assistance, were present in court; an American consular officer was also in attendance. Mr. Orville Turnquest, attorney for the defendants, entered pleas of not guilty. The prosecution asked for an adjournment until the next morning in order to allow more time for preparation. Counsel for the defense agreed but asked that the defendants be permitted bond and be further permitted to spend the night aboard their vessels. Magistrate John Baily acceded to this request and set bond at £50 each, the police to be permitted to keep the vessels, but not the men, under surveillance.

Before entering court the next morning, October 10th, Mr. Turnquest advised his clients that he had consulted with the Attorney General for the Bahamas who had told him that it was intended to change the charge from one of attempting to take fish to one of actually taking fish within the waters of the Colony. However, if defendants were willing to plead guilty to the lesser offense Turnquest had been assured that boats would not be seized and that defendants would be let off with a fine and a warning. The fishermen and the Schwartzes readily accepted this offer. In court, each defendant was fined £10 and given a stern warning.

Although the Consul, who was in court as an observer, visualized that a change of plea might not be the wisest move, it appeared the quickest way to dispose of this incident. However, the implications for the future are deemed to be serious, since the Bahamas Government intends to continue active measures to prevent what it regards as poaching in Bahamian waters. This intention is born out by the contents of a letter received by the Consulate General, from the Governor's Office, copy of which is attached.

The crewmen of "Miss Gail" and "Five Dees" claimed that they had set their pots in international waters several miles from where the "Decoy" found the boats; that the night before the Americans had gone to the spot where they were apprehended to seek refuge from rough water; and that, when apprehended, they were merely engaged in their morning personal hygiene and in preparing a breakfast of fish caught elsewhere. These claims seem to be somewhat belied by the facts that the boats took

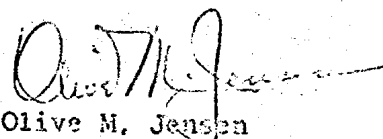
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flight when "Decoy" lowered a dinghy; the quick acceptance of the opportunity to change plea to guilty; and that after their release the press reported that they had asked that a ton and a half of decomposed fish be removed from the vessels, claiming that it was bait. The important point here is, not whether the Americans' story is true, but that it appears probable that the Bahamas Government and Judiciary are no longer going to accept any excuse given by American fishermen when apprehended in what GOBI regards as Bahamian waters.

The Bahamas Government still maintains that it is well known that Florida waters offer slim pickings for crawfishing, and it intends to prevent depletion of crawfish beds in their waters. Further, and most important, Government of Bahamas Islands wished to protect livelihood of Bahamian fishermen. See reftel 30.

For the information of the Department, copies of selected local newspaper articles are also attached.

The Department's advice is urgently requested.



Olive M. Jensen
Acting Principal Officer

Enclosures: 

- 1) Extracts from the Bahamas Penal Code (Sections 198(1) and 83(2))
- 2) Bahamas Government note (Thermofax copy)
- 3) 5 Local newspaper articles (1 thermofax copy each)

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EXTRACTS FROM THE BAHAMAS PENAL CODE

Section 198.--(1) Whoever, being the master or member of the crew of, or any person on board of, any foreign vessel, gathers sponge or any other marine product, or takes any fish whatsoever within any of the waters of the Colony shall be liable to a fine of one hundred pounds; and any foreign vessel used for any of such purposes shall be liable to forfeiture.

Section 83.--(2) Whoever attempts to commit an offence shall, if the attempt is frustrated by reason only of accident or of circumstances or events independent of his will, be deemed guilty of an attempt in the first degree, and shall, except as in this Code otherwise expressly provided, be punishable in the same manner as if the offence had been completed.

C O P Y

GOVERNMENT HOUSE,
BAHAMAS.
10th October, 1964.

I am directed by His Excellency the Governor to say that the Bahamas Government is again perturbed about crawfish poaching by vessels from the United States and particularly the setting of traps for crawfish on the Continental Shelf. The setting of such traps within the boundaries of the Colony is prohibited by the Agricultural and Marine Products (Fisheries) Amendment (No. 2) Rules 1963, and in this connection your attention is drawn to the Colonial Secretary's third person note No. 8559 of 13th September, 1963, which sets out the position as regards the boundaries of the Colony.

2. Under the Bahamas (Alteration of Boundaries) Order-in-Council, 1948 (p. xxxii of the Bahamas Laws, 1957 Edition), the boundaries were declared to be the Continental Shelf, which U.M. Government has ratified as the Continental Shelf to be the seabed to a depth of 200 metres. In view of this, a patrol has been despatched to prevent such poaching with orders to destroy traps found on the bottom within the boundaries of the Colony, i.e., the area of the Continental Shelf which lies beneath the sea contiguous to the coasts of the Bahamas.

3. I am also to say that His Excellency's Ministers have been informed that some system of permits relating to the landing of crawfish in Florida is said to have been initiated by the authorities there. It is understood that there is reference to landing of crawfish from the Bahamas or from areas which may be taken to include part of the Bahamas, and the Government are concerned lest fishermen might think that they were being licensed to fish in Bahamas waters. His Excellency would be grateful for authoritative information on the arrangements to which these reports relate.

GOVERNOR'S DEPUTY.

The Honourable Miss Olive Jensen,
Acting Consul General,
American Consulate,
Nassau.